

Chapter CCLVIII.¹

VOTING BY TELLERS AND BY BALLOT.

1. Rule for tellers. Section 3096.
 2. Vote by tellers interrupted by failure of a quorum. Section 3097.
 3. Inaccuracies in vote by tellers. Sections 3098, 3099..
 4. Chair may be counted in vote by tellers. Sections 3100, 3101.
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3096. The rules do not specify the manner in which tellers shall count the vote.

In a vote by tellers it is a matter of mutual agreement as to whether each teller shall count his own side or the opposing side.

On June 4, 1929,² during the consideration of the bill (S. 312) to provide for the fifteenth and subsequent decennial censuses, and at the close of a vote by tellers on an amendment proposed by Mr. George Holden Tinkham, of Massachusetts, Mr. Robert A. Green, of Florida, inquired.

Mr. Chairman a parliamentary inquiry. I desire to inquire if it is not in order under the rules of the House that when a teller vote is taken the opposing sides count the vote. Is not that true?

The Chairman³ replied:

There is no rule. The tellers are supposed to agree as to how they count the vote.

3097. A vote on an amendment taken by tellers in the Committee of the Whole having disclosed the lack of a quorum and objections being made for that reason, the vote by tellers is taken anew upon the appearance of a quorum.

Debate on a pending proposition is closed when the question is put on both the affirmative and negative, and the voidance of this vote through lack of a quorum does not open the question to debate when again under consideration.

¹Supplementary to Chapter CXXVIII.

²First session Seventy-first Congress, Record, p. 2364.

³Carl R. Chindblom, of Illinois, Chairman.

On December 21, 1922,¹ the Committee of the Whole House on the state of the Union resumed consideration of the agricultural appropriation bill with the question pending on an amendment offered by Mr. Albert Johnson, of Washington.

Mr. Johnson recalled that on the previous day on which the bill had been under consideration the question had been taken on the amendment and tellers had been ordered when the lack of a quorum developed and the committee had arisen. Mr. Johnson as a parliamentary inquiry desired to know the status of the question.

In response the Chairman² said:

The Chair has taken under consideration the situation in which the committee finds itself, due to the inquiry of the gentleman from Washington. Following the precedents and, in the opinion of the Chair, in the interest of orderly procedure, the Chair thinks that the committee should now revert to the point in its procedure where the gentleman from Washington originally offered his amendment, and that the several votes taken on the amendment be considered void. The Chair feels that when a vote is taken to which objection is made, due to the absence of a quorum, and the committee thereupon rises, the matter rests in the same state, so far as voting is concerned, in which it was in before the vote was taken, and must be resumed at this point when the bill is again considered. The Chair fortifies his position by a decision of Chairman Tilson on March 16, 1920, and by one of his own on December 5, 1919. Therefore the Chair will hold that the question now before the committee is on the amendment offered by the gentleman from Washington, which, without objection, the Clerk will again report.

The Clerk read as follows:

Amendment offered by Mr. Johnson of Washington: Page 4, line 14, strike out the figures "85,000" and insert in lieu thereof the figures "\$3,500."

Thereupon Mr. Johnson proposed to debate the amendment.

The Chairman said:

The Chair feels that any debate must be had by unanimous consent, and bases this ruling on a decision rendered by Chairman Walsh on January 5, 1921, when the sundry civil bill was under consideration. On the previous day on an amendment offered the question was taken and the result announced. Division was had and the result of this vote announced. Then a point of no quorum was made and sustained. Thereupon the committee rose. The debate on the amendment had not been closed by motion or agreement. On the following day, when the amendment was again considered, a motion to strike out the last two words was made. In denying the right of further debate the Chair said:

"The Chair will state that debate upon this amendment is exhausted. The question had been put, the point of no quorum was raised, and the committee rose."

The Chairman feels that the ruling was correct.

If further debate is to be permitted, is it not competent to ask why any additional time accrues because of the absence of a quorum, which, if a quorum had been present, would have disposed of the amendment without further debate? Why should the absence of a quorum permit additional time when the presence of a quorum would have denied it? The Chair feels that debate has been exhausted and can only proceed by unanimous consent.

3098. On a vote by tellers the Chair announces the vote as reported by the tellers and does not inquire as to the correctness of such report.

The report of the tellers having been announced by the Chair, it is too late to raise a question as to the correctness of the report.

¹ Fourth session Sixty-seventh Congress, Record, p. 825.

² Frederick C. Hicks, of New York, Chairman.

On December 12, 1919,¹ during consideration of the Army appropriation bill in the Committee of the Whole House on the state of the Union, the pending question was on agreeing to an amendment recommended by the committee reporting the bill.

The question being put, on a division, the yeas were 48 and the nays were 50.

Mr. David R. Anthony, Jr., of Kansas, demanded tellers, which were ordered, and the Chairman appointed as tellers Mr. Anthony and Mr. Fiorello H. LaGuardia of New York.

The tellers having reported, the Chairman announced that the yeas were 58 and the nays were 58, and the amendment was rejected.

Following the announcement of the vote by the Chairman, Mr. Anthony said:

Mr. Chairman, we counted General Sherwood's vote wrongly. He voted in the affirmative, and we counted him in the negative.

The Chairman² ruled:

The Chair thinks the Chair could do nothing more or less than to announce the vote as reported by the tellers; and, since the Chair has made the announcement, as far as the Chair is concerned, the result will stand.

The Chair has no personal interest upon either side of the question. There is but one thing for the Chair to do, and this is to announce the result as it is handed to him by the tellers.

After the announcement of the result it is impossible to open the case and the Chair refuses to permit it.

Mr. Warren Gard, of Ohio, asked unanimous consent that the Chairman be permitted to restate the vote.

The Chairman said:

Let the Chair state the question. The gentleman from Ohio asks unanimous consent that the Chairman be permitted to state the correct vote. Is there objection?

Objection is heard.

3099. Representation being made before announcement of the result that the count by tellers was incorrect, on a close vote, the Chairman ordered a recount.—On January 12, 1921,³ during consideration of the legislative, executive, and judicial appropriation bill in the Committee of the Whole House on the State of the Union, Mr. James H. Mays, of Utah, offered an amendment providing for an assay office at Salt Lake City.

The vote being taken by tellers, the tellers reported yeas 42, noes 42.

Mr. Mays said:

Mr. Chairman, I think it proper to have a recount. I ask for a recount because of the fact that I know of one gentleman who voted in the affirmative who was actually counted in the negative.

The Chairman⁴ decided:

The Chair presumes that the question of a recount would be within the discretion of the Chair. The vote is so close that the Chair thinks there might well be a recount.

¹ Second session Sixty-sixth Congress, Record, p. 495.

² Martin B. Madden, of Illinois, Chairman.

³ Third session Sixty-sixth Congress, Record, p. 1335.

⁴ Nicholas Longworth, of Ohio, Speaker.

3100. On a vote by tellers the Chair may be counted without passing between the tellers.

The Chair may vote to make a tie and so decide the question in the negative as he may vote to break a tie and decide a question in the affirmative.

On Fridays other than the second and fourth Fridays a motion providing for consideration of bills reported from the Committee on Claims or the Committee on War Claims has precedence of a motion to consider other bills on the Private Calendar.

On Friday, February 18, 1921,¹ it being the third Friday and a day on which bills reported from the Committee on Claims were in order, the House resolved itself into the Committee of the Whole House for the consideration of bills on the Private Calendar.

Mr. Louis C. Cramton, of Michigan, moved that the Committee of the Whole House proceed to the consideration of bills reported from the Committee on Claims.

Mr. Frank L. Greene, of Vermont, moved as a substitute that the committee proceed to consider the bill (S. 2867) to authorize retirement of Major General Crowder as a lieutenant general.

Mr. Cramton made the point of order that on this day a motion to consider bills reported by the Committee on Claims was preferential.

The Chairman² held:

The Chair sustains that point of order. It is clear that the preference is intended to be given to the Committee on Claims to-day, and the gentleman from Michigan has made the preferential motion that bills from that committee be considered, and that motion is not in order.

The question being taken by tellers on the motion to proceed to consideration of bills reported from the Committee on Claims, the Chairman announced:

On this vote the tellers report that the ayes are 110, the noes 109. The Chair votes in the negative; the ayes are 110, the noes, 110, the noes have it, and the motion is lost.

Mr. Cramton made the point of order that the Chairman has not passed between the tellers and was not entitled to vote to make a tie.

Mr. James R. Mann, of Illinois, in discussing the point of order said:

The Chair announced the result of the vote by tellers, and did not declare whether the affirmative or negative had it. But I doubt whether the Chair is authorized to vote without passing between the tellers, except in case of a tie vote. The Chair in case of a tie vote, where he has not passed between the tellers, has the right to vote in the affirmative in order to carry a proposition. But in this case there was no tie vote. I do not recall whether there is any precedent on the subject, but barring a precedent, certainly it seems the Chair could have come down and passed between the tellers by calling somebody else to the chair.

The Chairman ruled:

The Chair thinks, reasoning by analogy, that if the Chair can vote on a tie, he should be permitted to vote to make a tie, which would be equivalent to breaking a tie since it would change the result. But the Chair will examine the precedents, and, if wrong, will recall his vote. The present occupant of the chair wishes to rule and vote only in accordance with the rules of the

¹Third session Sixty-sixth Congress, Record, p. 3415.

²John Q. Tilson, of Connecticut, Chairman.

House and the precedents. [After a pause.] The only precedent the Chair is able to find in the very brief time at his disposal is the following. It is very brief, and the Chair will read it in full:

“5997. Hinds’ Precedents. On February 18, 1904, the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. Choice B. Randell, of Texas, proposed an amendment and a vote thereon was ordered by tellers.

“The tellers reported—ayes 79, noes 78.

“Thereupon the Chairman announced that he voted in the negative; that the ayes were 79 and the noes 79, and that the amendment was disagreed to.”

This is the precedent that the Chair finds. The Chair overrules the point of order.

3101. The Chairman may be counted on a vote by tellers without passing between the tellers.

It is within the discretion of the Chairman as to whether he will vacate the chair on an appeal from his decision.

On January 12, 1927,¹ while the independent office appropriation bill was being considered in the Committee of the Whole House on the state of the Union, Mr. John McDuffie, of Alabama, offered an amendment authorizing the use of \$5,000,000 for expenses of the United States Shipping Board Emergency Fleet Corporation.

The vote being taken on agreeing to the amendment, on a division, the yeas were 62 and the nays were 70.

Mr. Duffie having demanded tellers, the Chairman² announced the result of the vote as follows:

On this vote the tellers report, ayes 79, noes 78. The Chair votes “No,” making the vote a tie, and the amendment is therefore rejected.

Mr. Tom Connally, of Texas, made the point of order that the Chairman had not passed between the tellers and could not be counted.

The Chairman overruled the point of order and read the following excerpt from section 5996 of Hinds’ Precedents:

On February 14, 1901, while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, a vote was taken on an amendment proposed by Mr. James D. Richardson, of Tennessee, and relating to certain payments on account of the old customhouse in New York City.

On a division, there being ayes 75, noes 75, Mr. Richardson demanded tellers, which were ordered.

Before the announcement of the vote by tellers the Chairman announced that he would like to be considered as having gone between the tellers. Thereupon he announced the result, ayes 92, noes 92, and that the amendment was lost.

On appeal from the decision of the Chair, Mr. Connally argued:

I submit that the precedent which the Chair submitted does not cover this case. If the chairman of the committee this afternoon, as was done in the precedent which he cited, had announced prior to the announcement of the vote he desired to be considered as passing between the tellers, I am sure no gentleman on this side of the aisle and none on that side of the aisle would have objected to the Chairman being considered as having passed between the tellers. That is not the case here at all.

After the Members had passed between the tellers and after the tellers had announced the vote by which this amendment was adopted by one vote, after the book had been closed, after the record had been made, the Chairman arbitrarily, without asking the consent of the committee that

¹ Second session, Sixty-ninth Congress, Record, pp. 1528, 1530.

² James T. Begg, of Ohio, Chairman.

he be considered as having passed between the tellers and without physically having passed between the tellers, from his place assumed the right to say that he would vote in derogation of the custom of this House, which provides that he must pass between the tellers or have consent of the committee to be considered as having passed between the tellers.

Mr. John Q. Tilson, of Connecticut, said in opposition:

Mr. Chairman, no one has been able to cite a precedent on the other side; but let us for a moment reason by analogy. The Chairman is a Member of this body. He has a right to have his vote cast in case it will be decisive. There would be no occasion for him to cast it, no reason why he should leave the rostrum to vote unless his vote is decisive. Then, why require him to leave his post of duty at all? On this vote taken by tellers the noes were one short. The Chairman, being a Member of this body and entitled to vote, voted in the negative, thereby making a tie which, under the rules of the House, defeats the amendment.

The Chairman is putting the question on the appeal said:

The Chair feels that it is only fair to make a statement as the Chair understands the conditions as they happened. On the vote by tellers after all present had passed between the tellers who cared to pass between them, and the tellers had reported to the Chair, the Chair made the statement—

“On this vote the tellers report—ayes 79, noes 78. The Chair votes in the negative, making the vote a tie, and the amendment is, therefore, rejected.”

To that announcement the gentleman from Texas made the point of order. The Chair overruled the point of order. The gentleman from Texas appealed from the decision of the Chair.

The question now, is, Shall the decision of the Chair stand as the judgment of the committee?

Mr. Connally, as a parliamentary inquiry, asked:

Mr. Chairman, a parliamentary inquiry. Do not the rules require that the chairman vacate the chair when there is an appeal from his decision?

The Chairman replied:

They do not.

The question being taken, on a division, the yeas were 113, nays 82, and the decision of the Chair stood as the judgment of the committee.

3102. A Member having requested tellers is not thereby precluded from demanding a division.

On April 11, 1924,¹ during consideration of the bill H. R. 7995, the immigration bill, in the Committee of the Whole House on the state of the Union, the Chairman² put the question on agreeing to an amendment offered by Mr. Hamilton Fish, Jr., of New York.

The vote being taken, the Chairman announced that the noes seemed to have it, when Mr. Fish requested tellers.

A sufficient number of Members failing to support the request for tellers, Mr. Fish then demanded a division on the question.

Mr. Albert Johnson, of Washington, made the point of order that the demand for a division came too late after tellers had been requested and refused.

The Chairman said tentatively:

A viva voce vote had been taken on the amendment offered by the gentleman from New York. The Chair declared the amendment lost. Whereupon the gentleman from New York asked for tellers. On a demand for tellers, tellers are not ordered unless the demand is supported by 20

¹ First session, Sixty-eighth Congress, Record, p. 6141.

² Everett Sanders, of Indiana, Chairman.

Members. There was not a sufficient number rising to order tellers. The question that is presented here is whether a demand for tellers having been made the proceedings have elapsed so that the gentleman from New York loses his right to demand a division. The Chair is of the opinion that the gentleman from New York at the time that a demand for tellers was made was entitled to a division, and that that request for a division would have had precedence of a demand for tellers. The gentleman from New York not having demanded a division then, and subsequent proceedings having occurred, the Chair is of the opinion that it then is too late to demand a division. The Chair is of that notion, but being a novel question, if any gentleman desires to discuss the matter, the Chair will be very glad to hear him.

Mr. John Q. Tilson, of Connecticut, took issue with this position and said:

Mr. Chairman, this is an important matter, and if the Chair has no precedent that controls, I should like to be heard. It is clear that a viva voce vote having been taken there exists a right to have a division. Any one Member can demand a division, and it must be granted to him. The demand for tellers is a higher demand, or at least it is a more accurate method of taking the vote. Tellers having been asked for and refused, it does not seem to me that a Member should be deprived of his right to demand a division. If it were so that he could be deprived of it by some one demanding tellers and then voting down the demand, the Member would be deprived altogether of his right to a division. It seeks to me that this might lead to a practice of tellers being asked for and refused thereby defeating the right to even a division, with the result that a vote might be decided without an opportunity for determining its accuracy otherwise than by a viva voce vote.

The Chairman ruled:

At first blush the Chair was of opinion that failure by the gentleman from New York to demand a division at the time, and to at least have it pending, was a waiver of his right to later demand it. The precedent in Volume V, section 5998, is not quite in point, but it comes very near it. In that case there was a demand for tellers and another Member demanded the yeas and nays. The yeas and nays were refused. The Chair then held that the pending demand for tellers was not obliterated by the failure to get the yeas and nays. In the present case there was no demand pending for a division. However, this seems to be a novel question, and the Chair is not going to follow his first-blush opinion but is going to follow the suggestions later made and not deprive the Member of the right to a definite division upon his amendment. The Chair overrules the point of order.

3103. A demand for tellers or for a division is not precluded by the fact that the yeas and nays have been demanded and refused.

On March 3, 1937,¹ Mr. Bertrand H. Snell, of New York, from the Committee on Rules, reported the resolution (H. Res. 454) providing for the consideration of the joint resolution (S. J. Res. 152) amending the immigration act of 1924.

During consideration of the resolution Mr. Finis J. Garrett, of Tennessee, made the point of order that there was not a quorum present, and a quorum not being present, a call of the House was ordered.

The roll was called and 289 Members having answered to their names, a quorum, Mr. Snell moved to dispense with further proceedings under the call.

Mr. Garrett demanded the yeas and nays.

The question of ordering the yeas and nays having been submitted to the House, the Speaker² announced that not a sufficient number had risen and the request for the yeas and nays was refused.

Mr. Garrett thereupon demanded a division on the question of dispensing with further proceedings under the call of the House.

¹ Second session Sixty-ninth Congress, Record, p. 56538.

² Nicholas Longworth, of Ohio, Speaker.

Mr. Snell made the point of order that the yeas and nays having been requested and refused it was too late to ask for a division on the question.

The Speaker overruled the point of order and said:

The Chair simply announced that not a sufficient number had risen to order the yeas and nays. The Chair thinks that in the absence of any rule stating the order in which division on various questions may be called for, it would still be in order to demand a division.

The House divided, and the yeas were 110, noes 42.

Mr. Garrett asked for tellers.

Mr. Snell submitted the point of order that the request for tellers was not in order.

The Speaker ruled:

The chair thinks that even at this stage one-fifth of those present, a quorum, can demand tellers. As many as favor taking this vote by tellers will rise and stand until they are counted. [After counting.] Forty-eight gentlemen have risen, a sufficient number.

3104. The right to demand tellers is not prejudiced by the fact that a point of no quorum has been made against a division of the question on which tellers are requested.

On December 13, 1917,¹ the post-office appropriation bill was under consideration in the Committee of the Whole House on the state of the Union.

On an amendment proposed by Mr. Halvor Steenerson, of Minnesota, limiting salary payments to persons appointed under the civil service, on a division, the yeas were 25 and the nays were 22.

Mr. William E. Cox, of Indiana, made the point of order that there was not a quorum present, but while the Chairman was counting to ascertain the presence of a quorum, withdrew the point of no quorum and requested tellers on the vote.

Mr. William H. Stafford, of Wisconsin, raised the question of order that the point of no quorum was an intervention of such business as would preclude a demand for tellers.

The Chairman² overruled the point of order and said:

It is a very common occurrence here that when a point of no quorum is made tellers are demanded, and the Chair understood that was done in this case. The Chair will count. [After counting.] Twenty-five gentlemen have demanded tellers—a sufficient number for tellers on the vote.

3105 There is no appeal from the count by the chair of the number rising to demand tellers.

On April 27, 1933,³ the Committee of the Whole House on the state of the Union was considering the bill (H. R. 5240), providing for loans to home owners, when Mr. Robert L. Bacon, of New York, offered an amendment increasing the limit of valuation of homesteads affected by the bill.

¹ Second session Sixty-fifth Congress, Record, p. 270.

² Scott Ferris, of Oklahoma, Chairman.

³ First session Seventy-third Congress, Record, p. 2490.

The question being taken on agreeing to the amendment, and tellers being demanded, the Chairman¹ announced:

Twelve Members have risen, not a sufficient number, and tellers are refused.

Mr. John J. Boylan, of New York, rising to a parliamentary inquiry, submitted that a sufficient number had risen to order tellers and proposed to appeal from the count of the Chair.

Mr. Edward W. Goss, of Connecticut, made the point of order that an appeal from the count of the Chair was not in order.

The Chairman sustained the point of order.

3106. The rule provides that on an election by ballot a majority shall be required to elect, and, if necessary, ballots shall be repeated until a majority be obtained.

In balloting in early years of the House there was uncertainty as to treatment of blanks, but later a rule established the principle that they should not be considered as votes.

Recent history and present form of Rule XXXIX.

Rule XXXIX provides:

In all cases of ballot a majority of the votes given shall be necessary to an election, and where there shall not be such a majority on the first ballot the ballots shall be repeated until a majority be obtained; and in all balloting blanks shall be rejected and not taken into the count in enumeration of votes or reported by the tellers.

This rule, formerly known as Rule XL, retained the form adopted in 1880 until the revision of 1911,² when a provision which it carried at that time excepting its application in the election of committees was omitted to conform to the change in the method of selection of committees. The rule was also transposed at that time, becoming Rule XXXIX.

¹Fritz G. Lanham, of Texas, Chairman.

²First session Sixty-second Congress, Record, pp. 20, 80.